

ASSEMBLY BILL

No. 1337

Introduced by Assembly Member Cohn

February 23, 2001

An act to add Article 11 (commencing with Section 22879) to Chapter 1 of Part 5 of Division 5 of Title 2 of the Government Code, relating to public employee health benefits plans.

LEGISLATIVE COUNSEL'S DIGEST

AB 1337, as introduced, Cohn. Health benefits plans: subrogation: Association of Highway Patrolmen.

Existing law provides that specified employees and annuitants, as defined, may participate in a health benefits plan offered by the California Association of Highway Patrolmen.

This bill would establish rights and procedures for the recovery by that health benefits plan and the California Highway Patrolmen Health Benefits Trust of medical costs paid or to be paid by the plan or trust on behalf of those employees and annuitants for injuries caused by or due to the actions or inactions of a third person, as specified, including the recovery of attorney's fees and costs.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 11 (commencing with Section 22879) is
2 added to Chapter 1 of Part 5 of Division 5 of Title 2 of the
3 Government Code, to read:
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Article 11. Subrogation

22879. As used in this article:

(a) “Participant” means an employee, annuitant, or family member injured by or due to the actions or inactions of a third person, and includes any other person to whom a claim accrues by reason of the injury or death of the employee, annuitant, or family member.

(b) “Health benefits plan” means a health benefits plan offered by the California Association of Highway Patrolmen pursuant to Section 22790.

(c) “Health benefits plan” also means the California Highway Patrolmen Health Benefits Trust, where the trust’s payment for medical services is due to obligations assumed pursuant to coverage for illness, injury, or condition subject to the terms and conditions of coverage.

22879.1. The death of the participant or of any other person does not abate any right of action established by this article.

22879.2. The claim of a participant for payment or reimbursement of medical costs incurred by the participant shall not affect his or her claim or right of action for all damages proximately resulting from the injury or death against any person other than the health benefits plan. Any health benefits plan that pays, or becomes obligated to pay, medical costs to the participant or directly to a health care provider may likewise make a claim or bring an action against that third person. In the latter event, the health benefits plan may recover in the same suit, in addition to the total amount of medical costs, damages for which the plan was liable including claims for future medical costs paid or to be paid to any health care provider. The respective rights against the third person of the heirs of a participant claiming under Section 377.60 of the Code of Civil Procedure and a health benefits plan claiming pursuant to this section shall be determined by the court.

22879.3. If either the participant or the health benefits plan brings an action against the third person, the party bringing the action shall promptly give to the other a copy of the complaint by personal service or certified mail and proof of that service shall be filed in the action. That other party may, at any time before trial on the facts, join as a party plaintiff or shall consolidate its action, if brought independently.

1 22879.4. (a) If the action against the third person is
2 prosecuted by the health benefits plan alone, evidence of any
3 amount that the health benefits plan has paid or become obligated
4 to pay by reason of the injury or death of the participant shall be
5 admissible in that action and those expenditures or that liability
6 shall be considered as proximately resulting from that injury or
7 death in addition to any other items of damage proximately
8 resulting therefrom. The health benefits plan shall not be obligated
9 to pursue any portion of the participant's claim.

10 (b) If the participant joins in or prosecutes the action against the
11 third person, evidence of all other items of damage to the health
12 benefits plan or the participant proximately resulting from the
13 injury or death shall be admissible and included in the measure of
14 the damages.

15 (c) Notwithstanding any other rights provided, the health
16 benefits plan may file a lien for the amount paid for medical costs.

17 22879.5. In the event of a judgment in an action against the
18 third person:

19 (a) If the action is prosecuted by the health benefits plan alone,
20 the court shall first order paid from the judgment the reasonable
21 litigation expenses incurred in preparation and prosecution of the
22 action, together with reasonable attorney's fees that shall be based
23 solely upon the services rendered by the health benefit plan's
24 attorney in effecting recovery both for the benefit of the health
25 benefits plan and the participant. After the payment of those
26 expenses and attorney's fees, the court shall apply out of the
27 amount of the judgment an amount sufficient to reimburse the
28 health benefits plan for the amount of its expenditure for medical
29 costs.

30 (b) If the action is prosecuted by the participant alone, the court
31 shall first order paid from the judgment the reasonable litigation
32 expenses incurred in preparation and prosecution of the action,
33 together with reasonable attorney's fees that shall be based solely
34 upon the services rendered by the participant's attorney in
35 effecting recovery both for the benefit of the participant and the
36 health benefits plan. After the payment of those expenses and
37 attorney's fees, the court shall, on application of the health benefits
38 plan, allow as a first lien against the amount of the judgment the
39 amount of the health benefits plan's expenditure for the
40 participant's medical costs.

(c) If the action is prosecuted both by the participant and the health benefits plan, in a single action or in consolidated actions, and if those parties are represented by the same attorney or by separate counsel, the court shall first order paid from the judgment the reasonable litigation expenses incurred in preparation and prosecution of the action or actions, together with reasonable attorney's fees based solely on the services rendered for the benefit of both parties where they are represented by the same attorney, and, where they are represented by separate counsel, based solely upon the service rendered in each instance by the attorney in effecting recovery for the benefit of the party represented. After the payment of those expenses and attorney's fees, the court shall apply out of the judgment an amount sufficient to reimburse the health benefits plan for the amount of its expenditures for medical costs.

(d) The amount of reasonable litigation expenses and the amount of attorney's fees under subdivisions (a), (b), and (c) shall be fixed by the court. Where the participant and health benefits plan are represented by separate counsel, they may propose to the court, for its consideration and determination, the amount and division of those expenses and fees.

(e) The court shall, upon further application at any time before the judgment is satisfied, allow as a further lien the amount of any expenditures of the health benefits plan for medical costs subsequent to the original judgment.

22879.6. After payment of litigation expenses and attorney's fees fixed by the court pursuant to Section 22879.5 and payment of the health benefit plan's lien, the health benefits plan shall be relieved from the obligation to pay further medical costs to or on behalf of the participant under this part up to the entire amount of the balance of the judgment, if satisfied, without any deduction. No satisfaction of the judgment, in whole or in part, shall be valid without giving the health benefits plan notice and a reasonable opportunity to perfect and satisfy its lien.

22879.7. (a) No release or settlement of any claim under this article as to either the participant or the health benefits plan shall be valid without the written consent of both the participant and the health benefits plan. Proof of service filed with the court shall be sufficient in any action or proceeding in which that approval is required by law.

1 (b) Notwithstanding anything to the contrary contained in this
2 article, a participant may settle and release any claim he or she may
3 have against a third person without the consent of the health
4 benefits plan. That settlement or release shall be subject to the
5 health benefits plan's right to proceed to recover medical costs the
6 plan has paid in accordance with Section 22879.2.

7 22879.8. (a) No release or settlement under this article, with
8 or without suit, shall be valid or binding as to any party thereto
9 without notice to both the participant and the health benefits plan,
10 with opportunity for the health benefits plan to recover the amount
11 of medical costs it has paid or become obligated to pay, and
12 opportunity for the participant to recover all damages he or she has
13 suffered and with provision for determination of expenses and
14 attorney's fees as herein provided.

15 (b) Except as provided in Section 22879.7, the entire amount
16 of the settlement, with or without suit, shall be subject to the health
17 benefits plan's full claim for reimbursement for medical costs it
18 has paid or become obligated to pay, together with expenses and
19 attorney's fees, if any, subject to the limitations set forth in this
20 section.

21 (c) Where settlement is effected, with or without suit, solely
22 through the efforts of the participant's attorney, then prior to the
23 reimbursement of the health benefits plan, as provided in
24 subdivision (b), there shall be deducted from the amount of the
25 settlement the reasonable expenses incurred in effecting the
26 settlement, including costs of suit, if any, together with reasonable
27 attorney's fees to be paid to the participant's attorney, for services
28 in securing and effecting settlement for the benefit of both the
29 health benefits plan and the participant.

30 (d) Where settlement is effected, with or without suit, solely
31 through the efforts of the health benefits plan's attorney, then, prior
32 to the reimbursement of the health benefits plan, as provided in
33 subdivision (b), there shall be deducted from the amount of the
34 settlement the reasonable expenses incurred in effecting the
35 settlement, including costs of suit, if any, together with reasonable
36 attorney's fees to be paid to the health benefits plan's attorney, for
37 services in securing and effecting settlement for the benefit of both
38 the health benefits plan and the participant.

39 (e) Where both the health benefits plan and the participant are
40 represented by the same attorney or by separate counsel in

1 effecting a settlement, with or without suit, prior to reimbursement
2 of the health benefits plan, as provided in subdivision (b), there
3 shall be deducted from the amount of the settlement the reasonable
4 expenses incurred by both the health benefits plan and the
5 participant or on behalf of either, including costs of suit, if any,
6 together with reasonable attorney's fees to be paid to the respective
7 attorneys for the health benefits plan and the participant, based
8 upon the respective services rendered in securing and effecting
9 settlement for the benefit of the party represented. If both parties
10 are represented by the same attorney, by agreement, the attorney's
11 fees shall be based on the services rendered for the benefit of both.

12 (f) The amount of expenses and attorneys' fees referred to in
13 this section shall, on settlement of suit, or on any settlement
14 requiring court approval, be set by the court. Where the health
15 benefits plan and the participant are represented by separate
16 counsel, they may propose to the court, for consideration and
17 determination, the amount and division of the expenses and fees.

18 22879.9. (a) The court is empowered to and shall allow, as a
19 credit to the health benefits plan to be applied against the plan's
20 liability for medical costs, the amount of any recovery by the
21 participant for his or her injury, either by settlement or after
22 judgment, that has not previously been applied to the payment of
23 expenses or attorney's fees, pursuant to the provisions of Sections
24 22879.5, 22879.6, and 22879.8, or has not been applied to
25 reimburse the health benefits plan.

26 22879.10. Any health benefits plan that has perfected a lien
27 upon the judgment or award in favor of a participant against any
28 third person for damages occasioned to the health benefits plan by
29 payment of medical costs under this part may enforce payment of
30 the lien against the third person or, in case the damages recovered
31 by the participant have been paid to the participant, against the
32 participant to the extent of the lien, in the manner provided for
33 enforcement of money judgments generally.

34 22879.11. If an action as provided in this article prosecuted by
35 the participant, the health benefits plan, or both jointly against the
36 third person results in judgment against the third person, or
37 settlement by the third person, the health benefits plan shall have
38 no liability to reimburse or hold the third person harmless on the
39 judgment or settlement in absence of a written agreement to

- 1 provide that reimbursement or to hold that person harmless
- 2 executed prior to the injury.

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